

Notice of Allowability

Application No.

09/929,618

Examiner

Gentle E. Winter

Applicant(s)

NEWBERTH ET AL.

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to paper filed 2/6/04.
2. ☒ The allowed claim(s) is/are 1-4 and 8-17 (renumbered as 1-14).
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/28/2003 has been entered.

DETAILED ACTION

Claim Rejections - 35 USC § 103--Withdrawn

1. Claims 1-5, and 7-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5,149,441 and United States Patent No. 4,147,821.

2. Claims 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5,149,441 and United States Patent No. 4,147,821 and United States Patent No. 5,006,233.

1. The rejection has been withdrawn in light of the arguments and claim amendments. Most notable was the exclusion of the formation of an emulsion, which was credibly asserted to be at the heart of the invention during a telephone interview, and which has been incorporated into all the independent claims.

Information Disclosure Statement

2. The information disclosure statement filed 8/26/2003 has been considered.

Allowable Subject Matter

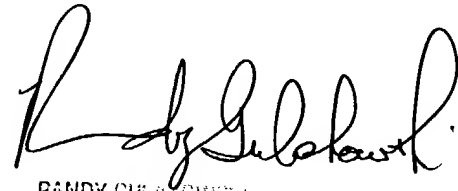
2. Claims 1-4 and 8-17 renumbered as 1-14 are allowable.
3. The following is an examiner's statement of reasons for allowance:
4. The determination of patentability relies on many factors, including the limitations included in the claims and arguments made in distinguishing the claims from the prior art of record. This examiner has been fortunate to work with very knowledgeable counsel, especially Daniel Scola. The present invention is drawn to an anaerobic-curable composition, which upon mixing with water is readily separable based on a density gradient. Additionally, the presently claimed composition does not form an emulsion with the water. The composition is disclosed throughout the art, but the property of the composition (no emulsion) is not disclosed. This examiner has no suggestion for a more distinct way of defining the composition. Claim 1 distinguishes over the prior art of record by its recitation of functionality, that is, the fact that no emulsion is formed. This recitation of claim functionality is permitted because the use of the functional expression "without emulsification" is neither vague nor does it make the claim broader than the invention. Because the prior art of record apparently fails to contemplate the non-emulsion forming (meth)acrylate/free radical initiator composition described in the claims and specification, the claims are believed to be allowable.
5. The method claims, claims 10 and 17, are allowed for the same reasons. The arguments made during the interview on 9/5/03 (see interview summary in case 09/929,562) were considered especially relevant and helpful in making the determination of patentability.

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6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E. Winter whose telephone number is (571) 272-1310. The examiner can normally be reached on Monday-Friday 7:00-3:30.
8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gentle E. Winter
Examiner
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March 5, 2004


RANDY P. GULAKOWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700